On the trial of an action on the policy, evidence was given by shipowners and mariners to the effect that, by the usage of the shipping trade, a loading port on the west coast of South America, as specified in the policy, would include the Guano Islands lying off the coast. The jury found for the plaintiff.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the policy must be construed to mean what would be understood by shippers, shipowners, and underwriters, and the jury having based their verdict on evidence of what such understanding would be, their finding could not be disturbed.

Appeal dismissed with costs.

Stratton for the appellants.

Weldon, Q.C., for the respondent.

NOVA SCOTIA.] [June 13.

CLARK *v.* CLARK.

Will—Construction of—Devise to two persons—Joint tenants or tenants in common—Severance.

The will of R. C. devised his real estate to his two sons, their heirs, executors, and assigns, and ordered that said sons should jointly and in equal shares pay the testator's debts, and the legacies granted by the will. There were six legacies given to two other sons of the testator of £50 each, payable by the devisees in two, three, four, five, six, and seven years respectively. The estate was vested in the devisees before the passing of the Act abolishing joint tenancies in Nova Scotia.

Held, reversing the decision of the Court below (21 N.S., Rep. 378), TASCHEREAU and GWYNNE, JJ., dissenting, that the provisions for payment of debts and legacies indicated an intention on the part of the testator to effect a severance of the devise, and the devisees took as tenants in common and not as joint tenants.

Fisher v. *Anderson* (4 Can. S.C.R., 406), followed.

On the trial of a suit, between persons claiming through the respective devisees, to partition the real estate so devised, evidence of a conversation between the original devisees as to the manner in which they regarded their tenure of the estate, was tendered and rejected.

Held, GWYNNE, J., dissenting, that such evidence was properly rejected.

Held, per GWYNNE, J., that the evidence could not have had the effect of assisting to explain the will, which was the ground upon which it was rejected at the trial, but it should have been received as evidence of a severance between the devisees themselves, joint tenants under the will. Appeal allowed with costs.

Harrington, Q.C., for the appellants.

Borden for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From Q.B.D.] [Jan. 8.

HENDERSON *v.* KILLEY ET AL.

Partnership — Dissolution—New firm—Novation—Trust—Right of third person to enforce.

K. and M. carried on business under the name of K. & Co., and dissolved partnership, K. giving to M. sixteen promisory notes for $500 each, with interest, for M.'s share in the business, which was continued by K. K. afterwards formed a partnership with O., and by the articles of partnership transferred to the co-partnership, as his contribution to the capital, all the assets of his business subject to the deduction therefrom of his liabilities, which was to be assumed by the co-partnership and charged against him. Amongst K.'s liabilities known to O., were ten of the notes which M. had endorsed over to the plaintiff before maturity, and the assets transferred to the co-partnership were sufficient to pay all K.'s liabilities including these notes. The firm of K. and O. paid two of the notes and also paid interest on another note, and some negotiations took place between the plaintiff and the firm of K. & O. for an extension of time for payment of the unpaid notes.

Held (BURTON, J.A., dissenting), reversing on this point the judgment of the Queen's Bench Division, 14 O.R., 137, that no trust was established in favor of M., by the co-partnership agreement between K. and O., and that the plaintiff, assignee of M., was not entitled to enforce, as against O., the performance of the stipulation in the deed for payment of the notes held by her.

Gregory v. *Williams*, 3 Mer. 582, and *In re Empress Engineering Co.*, 16 Chy.D., 125, specially considered.

But (*per* HAGARTY, C.J.O.), that the evidence established that an independent agreement